

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 245 be amended to read as follows:

1       Page 51, between lines 3 and 4, begin a new paragraph and insert:  
2       "SECTION 54. IC 8-1-29.5 IS ADDED TO THE INDIANA CODE  
3       AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4       JULY 1, 2006]:

5       **Chapter 29.5. Enforcement Remedies for Prohibited Actions by**  
6       **Telecommunications Service Providers**

7       **Sec. 1. This chapter applies to a provider that is:**

8       **(1) exempt from commission jurisdiction after June 30, 2009,**  
9       **under IC 8-1-2.6-1.4;**

10       **(2) exempt from commission jurisdiction under IC 8-1-2-88.5**  
11       **or IC 8-1-17-22.5; or**

12       **(3) subject to the terms and conditions of a settlement**  
13       **agreement approved by the commission before July 29, 2004.**

14       **Sec. 2. Except as otherwise provided in this chapter, the**  
15       **definitions in IC 8-1-2.6 apply throughout this chapter.**

16       **Sec. 3. As used in this chapter, "commission" refers to the**  
17       **Indiana utility regulatory commission created by IC 8-1-1-2.**

18       **Sec. 4. As used in this chapter, "customer", with respect to a**  
19       **provider, refers to any of the following:**

20       **(1) A retail customer of the provider, including a residential**  
21       **customer or a business customer.**

22       **(2) Another provider that obtains retail or wholesale services**  
23       **from the provider.**

24       **Sec. 5. A provider shall not do any of the following:**

25       **(1) With respect to any service provided at the retail or**  
26       **wholesale level, establish a rate, term, condition, or practice**  
27       **that is anticompetitive or unreasonably preferential,**  
28       **prejudicial, or discriminatory. For purposes of this**  
29       **subdivision, the following apply:**

30       **(A) A rate, term, or condition for, or practice in connection**  
31       **with, retail service is unreasonably preferential,**

prejudicial, or discriminatory if the rate, term, condition, or practice:

- (i) is not offered or not applicable to all comparably situated customers in a metropolitan statistical area; or
- (ii) violates IC 8-1-2-103(a) or IC 8-1-2-105, to the extent the provider is subject to IC 8-1-2-103(a) or IC 8-1-2-105.

(B) A rate, term, or condition for, or practice in connection with, services provided to another provider may be anticompetitive, regardless of whether the rate, term, condition, or practice constitutes a breach of:

- (i) the access, interconnection, or resale obligations of the provider under 47 U.S.C. 251; or
- (ii) an agreement negotiated under 47 U.S.C. 252 with respect to any request by another provider for interconnection, services, or access to network elements.

(2) With respect to basic or nonbasic telecommunications service offered by the provider in an unregulated exchange area, establish a retail rate that is subsidized either directly or indirectly by another service for which rates are regulated by the commission.

(3) Engage in predatory pricing, or attempt to engage in predatory pricing, for any service provided at the retail or wholesale level. For purposes of this subdivision, a rate is considered predatory if a service is not set at or above the service's long run incremental cost.

**Sec. 6. (a) This section applies if:**

- (1) a dispute arises under this chapter between a customer and a provider; or
- (2) a customer alleges a violation of this chapter by a provider.

**(b) As used in this section, "complaining party" refers to a customer or provider who first acts to:**

- (1) file a complaint with the commission under subsection (c); or
- (2) provide notice of intent to seek arbitration under subsection (d);

**with respect to a dispute or an allegation described in subsection (a).**

**(c) Any party to a dispute or an allegation described in subsection (a) may file a complaint with the commission to have the dispute or allegation decided by the commission after notice and hearing. The commission has all necessary authority to resolve disputes or allegations arising under this chapter, including the authority to provide and enforce remedies, including the awarding of damages and injunctive relief. In the case of a dispute involving a customer described in section 4(2) of this chapter, the commission's authority to resolve the dispute under this section is in addition to the commission's authority under**

1 IC 8-1-2.6-1.5(b)(5).

2 (d) Instead of filing a complaint with the commission under  
3 subsection (c), the complaining party may elect to have the dispute  
4 or allegation decided by arbitration by providing the other party  
5 written notice of the party's intention to seek arbitration. If the  
6 complaining party elects arbitration by providing the other party  
7 written notice under this subsection, the dispute or allegation must  
8 be expeditiously determined by binding arbitration before a panel  
9 of three (3) arbitrators. Each party to the dispute shall select one  
10 (1) member of the panel, and the members chosen by the parties  
11 shall select the third member. If the members chosen by the parties  
12 are unable to agree on the third member of the panel, the members  
13 shall request a list of candidates from an independent alternative  
14 dispute resolution organization. The third member shall then be  
15 selected in accordance with the alternative dispute resolution  
16 organization's published procedures. An arbitration panel selected  
17 under this subsection is authorized to do any of the following:

18 (1) Award damages, including punitive damages.

19 (2) Order preliminary or permanent injunctive relief.

20 The arbitration panel shall issue a final determination in the matter  
21 not later than one hundred eighty (180) days after the date of the  
22 complaining party's notice under this subsection. The decision of  
23 the arbitration panel is final, subject to any grounds for appeal  
24 defined by the panel. The expenses of the parties and the  
25 arbitration panel shall be allocated between the parties by the  
26 panel in a manner consistent with the decision and any relief  
27 granted. This subsection does not void an alternative dispute  
28 resolution clause, or any other agreement by the parties with  
29 respect to resolving disputes, contained in an interconnection  
30 agreement or other contract between the parties.

31 (e) Subject to any regulations adopted by the Federal  
32 Communications Commission, subsections (c) and (d) do not affect:

33 (1) the commission's authority to mediate a dispute between  
34 providers under 47 U.S.C. 252(a);

35 (2) the commission's authority to arbitrate a dispute between  
36 providers under 47 U.S.C. 252(b); or

- 1           **(3) the commission's authority to approve an interconnection**
- 2           **agreement under 47 U.S.C. 252(e)."**

3           Page 64, line 37, delete "section," and insert "**chapter,**".

4           Renumber all SECTIONS consecutively.

(Reference is to SB 245 as printed January 12, 2006.)

---

Senator MERRITT